B

LRBs 0472

Kennedy, Debora

From: Betsy J. Abramson [abramson@mailbag.com]
Sent: Thursday, January 19, 2006 9:03 AM
To: Bruce, Cory; Kennedy, Debora; Lisa Roys
Subject: Re: SB 391 (Chapter 880 rewrite)

Cory:

Excellent! Excellent! Excellent!
I will be finishing the memo to Debora - summarizing our "decisions" on Tuesday and the response to anything that we want to change from issues raised by the counties association (won't be many of the latter), by end of this evening and so everyone should have it by a.m. I will also work on a LESS THAN TWO PAGE summary of the entire bill, for Senate Roessler's Health Committee and then send it on to all of you, for Cory to tweak as she'd like. Warning: Brevity is not my strong suit (in e-mails, writing or verbally, as you've already discovered), so I will be grateful for your red pen and cleaver.

I must again reiterate my admiration for what a quick-study you all are and how grateful the Elder Law Section is for your thorough work on both the procedure and substance. I'm on my way to the Elder Law Section meeting later this morning and you can be sure we will all clink our coffee cups in honor and appreciation of all of you!

Betsy

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> ----- Original Message -----
> **From:** Bruce, Cory
> **To:** Kennedy, Debora ; abramson@mailbag.com ; Lisa Roys
> **Sent:** Thursday, January 19, 2006 8:54 AM
> **Subject:** SB 391 (Chapter 880 rewrite)
>
> Okay, I had a chance to talk to Luther. He would prefer to do a substitute amendment. He thinks that would be easier for everyone.
>
> On venue, he agrees we should just keep what's in the bill. We told the Counties that was what we'd go with if they didn't give us an alternative and they haven't. If it comes to the end of session and its a sticking point to get it passed then we can take it out and move the rest forward, but until that comes, let's go with what we have.
>
> He thinks its good that we were hesitant to change things that were "new" ideas to the bill and instead just tweaked somethings and cleaned other things up. So I'm confidant in saying that everything we discussed the other day is okay on our end.
>
> And lastly, Betsy said that she would put together a follow up memo to the one she wrote about our meeting on the counties where we asked for their input. The question was "should we also send it to the counties?". Luther says No. We have given them plenty of opportunities to respond and they haven't. We told them we were meeting to draft an amendment and they didn't respond to that. So we'll move ahead with what we want to do.
>
> I spoke with Roessler's office and she thinks that they are going to hold an exec. session on January 31st. She

said that if they do for sure schedule something that day Carol would be okay with putting this on the calendar. She did ask if we might be able to put something together that can briefly explain some of the changes. I told her that I thought we could get something together. I'm probably going to need some help with that though!

So we have the go ahead on changes and we have the deadline. Does that work for everyone?

If I'm leaving something out let me know.

Cory
Sen. Olsen's office

Kennedy, Debora

From: Betsy J. Abramson [abramson@mailbag.com]
Sent: Thursday, January 19, 2006 10:37 PM
To: Bruce, Cory; Kennedy, Debora; Lisa Roys; Ellen Henningsen; Dianne Greenley
Cc: Jim Jaeger; Barbara Hughes; beckerhickey_bjb; tammi@execpc.com
Subject: SB 391 - set of changes for Sub amendment
Attachments: Decisions for sub amendment 1-19-06.doc

1/19/06
All: Here are changes based on our DISCUSSION at 1/16/06 meeting. By end of day (noon if I'm lucky....) I'll have responses to WIs. Counties Association concerns. Thanks much all - and especially Debora for whom this is a gigantic job on a short deadline.
Betsy

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#16 needs resolution - See 9/1/06 e-mail DAK → BJA

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January 19, 2006

TO: Debora Kennedy, LRB

CC: Cory Bruce (Sen. Luther Olsen), Lisa Roys (State Bar), Ellen Henningsen (CWAG Elder Law Center), Dianne Greenley (Wisconsin Coalition for Advocacy)
Attorneys Jim Jaeger, Barbara Hughes, Barbara Becker, Bruce Tammi

RE: Guardianship Reform – Summary of decisions from 1/16 meeting.

Thanks again to all for meeting on Tuesday, January 16th. As discussed, I talked to Dianne Greenley of the Wisconsin Coalition for Advocacy about a couple of the issues. The following summarizes decisions related to issues discussed at that meeting. By the end of tomorrow, January 20, 2006, I hope to have responses to the issues raised by the Wisconsin Counties Association.:

BA WCB

✓1. Spendthrifts – per my 1/16/06 memo, and as we discussed. Separate sub-section regarding spendthrifts; can only result in guardians of the estate; reference only to guardian of estate duties and powers; "yes," need a psychologist's/doctor's report for spendthrifts. Factors for court to consider, same as for incompetence except NOT proposed 54.10(3)(c), 8, 9, 10, 12 or 14.

✓ 2. **Page 49 – lines 8-15 – 51.45** – Retain as is. Dianne Greenley and I recognized that this is another one of those "only reason it's in the bill is because existing statute referenced ch. 880." It deals with alcohol admissions. Not our job in guardianship reform to address/change. Retain as in current draft.

✓ 3. **Page 99 – line 15 - 55.03** as discussed. Delete the words "agency aging as a" so that 55.03 reads: STATUS OF GUARDIAN. No …guardian appointed under ch. 54….may be a provider of protective services or placement….."

✓4. Page 33, lines 5-6, and line 10, page 100, line 9 and line 18, remove the words "in this state." These are provisions that permit admissions to certain facilities by guardians and we agreed, on Ellen Henningsen's suggestion, not to limit those to guardians appointed in Wisconsin, since these are the "non protective placement required too" kinds of admissions. I note that per our discussion, I searched the bill for all of the references to "in this state" in the bill. There were 30-40 of them – most addressing non-chs. 880/54 or 55

issues. Again, I believe we agreed and Senator Olsen has confirmed that we should not go beyond guardianship-related areas.

5. Page 171 – 54.01 (2) – Ellen suggested we revise the definition of **agency** to specifically include service providers, facilities (including Adult Family Homes), and corporate guardians. Given the change we made on p. 99, concerning the status of guardian and my search for other places where "agency" is used, I believe we should not change the definition further. Retain as in current draft.

4. Page 171 – 54.01 (10) - definition of **guardian** – Ellen Henningsen had questioned whether this excluded corporate guardians. We determined that it's fine as is. Retain as in current draft.

5. Subch II – Appointment of Guardian
Page 175 - 54.12 (2) – include spendthrift guardians in **informal administration.**

6. Subch III – Nomination of Guardian
Page 217 – 54.15 (1) is where it says "the court shall also consider potential conflicts of interest resulting from the prospective guardian's employment or other potential **conflicts of interest**." This is so important that it should apply to all parts of 54.15; thus, it should have its own subsection. Made (lm) Created title also

7. Subch III – Nomination of Guardian
Page 227 – 54.15 (7) talks about corporate guardians and adds **"unincorporated association**." Ellen had questioned this. Through discussion, we agreed it was fine. Retain as in current draft.

8. Subch III – Statement of Acts by nominated guardian
Page 63, lines 23-25. Ellen had suggested expanding the questions to include any accusation of wronging in their employment or in their religious bodies. Elder Law Section and those of us at meeting declined the suggestion; retain as in current draft.

9. Subch III – List of Duties and Powers of Guardian of the Estate
P. 65 - Add that guardians should apply to become **representative payee** or ensure that a representative payee is appointed, as needed. Do not include word "monitor"; that is Social Security Administration's job. CR ; 54.19(9)

10. Subch III – Powers and Duties
Page 65 line 8, – Include in list a reference to ch. 881 (**prudent investor act**), similar to reference to ch. 786.

11. Subch III – Powers and Duties
The bill is confusing about the interrelationship between ch. 54 and **ch. 786** - Pages 67 and 197 - 54.20 (3) states that the guardian may sell any asset of the ward at fair market value without the approval of the court, subject to 786. Ch. 786 requires court approval for real property. We determined that sale of real estate needs court approval, personal property

does not, so not confusing. "[S]ubject to 786" excepts out real estate and therefore is fine. Retain as in current draft.

12. **Subch III – Power and Duties**

Page 197 – sec 54.22 (current 880.19 (5) (b) – Sale, mortgage, pledge, lease or exchange ward's non real estate property. This should be included in the laundry list of 54.20(3), p. 67 – powers that do not require court approval. Note that we had felt there was ambiguity, if not outright conflict, between these two sections – i.e., was court approval needed or not? We determined that these sales of non real estate property should not require prior court approval, given the guardian's fiduciary duty, "best interests," obligation to provide for ward's needs, etc. We called this the "do we want guardians to have to get court approval to sell the teapot?" and confirmed that we do not. Therefore, we found current draft of 54.22 on p. 197 problematic. We decided (and I believe Debora has more exact notes on this), to permit, but not require a person to seek court approval for a sale, for such situations as a *guardian* being concerned that an interested person might object to a sale of property (an antique family heirloom teapot?) or someone else being concerned that a guardian was hanging on to property (to preserve as an inheritance?) that should be sold to be used for ward's needs. Thus, we decided to both "flip the order" and to add in a "notwithstanding" so the section would read with language such as the following: "Notwithstanding secs. 54.20(3)(g)-(i), any person interested in the estate of a ward may petition the court to authorize or require the guardian to sell, mortgage, pledge, lease or exchange any property of the estate. After such notice as the court directs, the court may order……"

unnecessary bec. already authorized under 54.20(3)(g)-(i)

13. **Subch IV – Procedures**

Pages 79 and 178-9 - Requirements for a **petition** - sec. 54.34 (current 880.07) – whether a petition has been dismissed in another county or state. (Bill already includes statement about whether or not there's a petition pending in another county or state.) I apologize; I have no notes of our discussion on this point. My old notes state: "*Not sure why you'd have to note that a petition had been dismissed in another county – does length of time since the dismissal make a difference? DECISION: Court might want to know about forum shopping – since guardianships are not on CCAP, court has no way to find out the history. Also, maybe proposed ward has been under guardianship before. Is relevant.*" I am hoping Debora has good notes on this point. Again, my apologies.

Note: my Notes say "Not now" DAK

14. **Subch IV – Procedures**

Since Wisconsin Counties Association has not come up with an alternate proposal about **jurisdiction and venue,** Sen. Olsen decided to retain current language. Ellen Henningsen agreed to get together with me (we also suggested perhaps Neil Gebhart from DHFS) about whether anything should or needed to be changed given the holding of *Jane E.P.* However, we recognize that we are on a tight deadline.

15. **Subch IV – Procedures**

Page 178 – 54.34 (current 880.07) Ellen was concerned that the provision removes "**public official**" from the list of who can file for guardianship, leaving "any person" as the

petitioner. Debora confirmed that this includes public officials. Retain current language – no changes.

16. **Subch IV – Procedures**
Page 80 - **Notice** should be jurisdictional – that is, if a family member or agent, etc. is not given notice, the matter has to be reheard. I believe current case law is that failure to give notice is not jurisdictional as long as the person got informal notice – however, the informal notice requirement is routinely ignored. We are mindful that unlike other court matters where there is a defendant to raise notice and other jurisdictional questions, this is rarely the case in guardianship matters. Therefore, Debora will check with other drafters about how to ensure that guardianship petitions not be heard unless proper notice was provided.

NW 801.50 venue

Notice shall be served in manner § 801.11

See DAK e-mail 2/1/06 to B. Abramson

17. **Subch IV – Procedures**
Page 83 – 54.44 (6) – change "inappropriate" to "unsuitable" – to retain consistency of terms. P. 81, line 10 – change "fitness" to "suitability." NOTE: I searched the bill; these are the only places where we had used the term "fitness" instead of "suitable."

18. **Subch IV – Release of Records**
54.75 Access to court records. SB 391 says that all records are closed, although someone can find out that a person is incompetent if that person demonstrates to custodian a need for that info – but that wouldn't include who is the guardian, how the annual accounts have been, etc. As we noted, the new reference is to 51.30(5) instead of 55.06(17), but one loops back into the other anyway. In a phone discussion with Attorney Greenley on January 19, 2006, she suggested adding 51.30(3) in addition to 51.30(5) because this states that court records "…under this chapter may be released to other persons with the informed written consent of the individual, **pursuant to lawful court order of the court which maintains the** records or…." Upon further reflection, I'm concerned that the "under this chapter," would only refer to ch. 51 records. Perhaps therefore, we should add to 54.75 some additional provision for release "pursuant to lawful court order under **this [ch. 54]** chapter. (All emphasis added.) See my wording; See also amdt. § 55.06 (17) (b) +

19. **Subch. V – Post-Appointment Matters**
Ellen had suggested providing the court the option to order movant to pay **GAL fees** in **post-appointment** matters, so that ward's estate is not *required* to pay them when there's an inappropriate post-appointment matter raised. Group agreed. I was to check for page number – I could not find one because, I believe, this is a new idea – and one with which we agreed. The closest I found to it was 54.68(6) on p. 92, beginning on line 19, but this addresses "Fees and Costs to Proceedings" only in cases involving review of a guardian's behavior. We need a broader provision for all post-appointment matters.
See my wording under s. 54.74 (an from 880.331(2))

20. **Admissions to facilities without a protective placement where subject individual has a diagnosis of mental illness or developmental disability.** Dan Zimmerman of DHFS had noticed a conflict between AB 785's proposed changes to 55.055(1)(b) (p. 66, lines 22-23 of that draft) and SB 391's proposed changes to 55.05(5)(b)2 – p. 100, lines 16-24 (nothing comparable to AB 785's language on this point). The language in

SB 391 (and we'll deal with AB 785 separately) should be revised to language such as: "Admission under this paragraph is not permitted for an individual for whom the primary purpose of the admission is for treatment or services related to the individual's mental illness or developmental disability." (Debora: See e-mail exchange between Abramson, Zimmerman, Greenley and Henningsen, previously provided.)

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✓ Change made, per p. 6

January 20, 2006

TO: Debora Kennedy, Legislative Reference Bureau
Senator Luther Olsen and Cory Bruce
Representative John Townsend, (Matt Pulda)
Senator Mark Miller (Jamie Kuhn)
Ellen Henningsen, CWAG Elder Law Center

FROM: Betsy Abramson, Advisor, State Bar of Wisconsin's Elder Law Section

CC: Lisa Roys, State Bar of Wisconsin
Bruce Tammi, Chair, State Bar of Wisconsin's Elder Law Section
Attorneys Jim Jaeger, Barbara Becker and Barbara Hughes
Dianne Greenley, Wisconsin Coalition for Advocacy

RE: Wisconsin Counties Association's concerns with SB 391

As you know, representatives from Rep. Townsend, Senator Miller and Senator Olsen's office (as well as Sen. Olsen for a portion of the meeting) on November 15, 2006, with Craig Thompson and Sarah Diedrick-Kasdorf of the Wisconsin Counties Association. They raised a number of concerns with SB 391. I volunteered to summarize the discussion and respond to each, indicating where we agreed, where I believed the Elder Law Section had different views, or where we invited the Counties to propose different language. To date, the Wisconsin Counties Association has not provided any written response to any of the concerns listed. Senator Olsen has indicated therefore that we should proceed forward and address these issues on our own. Thus, this memo will summarize what we understood to be WCA's concerns, my response and any proposed changes. It follows numerically the list of concerns identified in the December 2, 2006 memo I drafted two weeks after that meeting.

1. **Venue and County of Responsibility** – WCA is concerned about the costs associated with changes in venue/county of responsibility. We explained that the goal is to have venue and county of responsibility be consistent across target populations (people with developmental disabilities, the elderly, people with chronic mental illness) and service setting (FDDs, CBRFs, nursing homes, etc.) We acknowledged that the proposal had been drafted before the Wisconsin Supreme Court's decision in *Jane E.P.* We also indicated that traditionally the Department of Health and Family Services (DHFS) had looked at: (a) physical presence; (b) voluntariness – including as expressed by a guardian; (c) intent to

remain; and (d) in a place of fixed habitation. There is no strong feeling on the part of the Elder Law Section members as to how the language should be drafted. WCA agreed to take the lead in drafting legislation that would work for their members and be consistent with any requirements of *Jane E.P.*

1/20/06 – Senator Olsen has since indicated that, having heard no response from the WCA, we should retain provisions as in the bill. Ellen Henningsen from the CWAG Elder Law Center and I will look at these, hopefully early next week, for a final review.

2. **Role of Guardian ad Litem (GAL) –** WCA is concerned about increased costs from what they perceive as increased roles for guardians ad litem. The only "new" duties identified are: (a) interviewing the proposed guardian; (b) potentially waiving the proposed ward's duty/right to appear at a hearing; and (c) completing part of their tasks before a hearing, when possible, in a temporary guardianship case. Our responses are as follows:
   (a) Other than "investigating the suitability," of the proposed guardian [bill sec. 102 – proposed sec. 54.46(3), pp. 83-84], which could be done by phone (i.e., it does not require an in-person interview), we do not see additional duties placed on the GAL. The WCA agreed to review the GAL duties included in the bill and identify "new" duties of the GAL (i.e., those not already required by case law or existing statutes).
   (b) The potential waiving of the proposed ward's duty/right to appear at a hearing is a decision the GAL will be able to make over the course of their other GAL duties – visiting and interviewing the ward, phone calls with providers, family members, other interested parties. Given that the GAL will be required to be at the hearing anyway, and there is no paperwork involved with this issue, it appears to us that the GAL, when stating his/her appearance at the hearing, merely adds, when appropriate, that s/he has waived the ward's duty to be at the hearing for the reasons the GAL states.
   (c) Temporary Guardianship – bill sec. 102, proposed sec. 54.50(3)(b), p. 86. The WCA was concerned about what it believed was a requirement that the GAL in a temporary guardianship be required to visit the proposed ward before the hearing. As Lisa Roys and I pointed out to Sarah in the Capitol rotunda immediately after the Senate Committee hearing, the proposed legislation actually does not require that the GAL meet with the proposed ward before the temporary guardianship hearing. Rather, it states, on p. 86 that:

> "[t]he court shall appoint a guardian ad litem, who shall **attempt to meet with the proposed ward before the hearing *or as soon as is practicable after the hearing*, but not later than 7 calendar days after the hearing."** (Emphasis added.)

1/20/06 – We continue to believe that any additional duties of the GAL are *de minimis*. Since the WCA has not identified any proposed provisions that are of greater concern, we continue to believe the bill's language should be retained as is.

3. **Cost responsibility when committed individual voluntarily moves to another county, or is transferred. Bill section 61, sec. 51.20(3)(g)4, pp. 37-38, lines 22 (p. 37) – 2 (page 38) .** This provision states that

> [t]he county department under s. 51.42 or 51.437 to which the individual is committed under par. (a) 3. retains financial responsibility for the individual if the individual voluntarily moves to another county until venue for the individual is transferred to the county in which the individual is physically present or until the individual is no longer a proper subject of continued commitment.

We continue to believe that this provision is logical; retain the status quo, that is the first county continues to be responsible, until venue is established in the new county where the individual is physically present. NOTE: In addition, at the County's request, I spoke with Dyann Hafner, Dane County Assistant Corporation Counsel, whose concern was that the state, not the counties, continue to be responsible for "at large" mental health commitments, indicating that there are individuals who really have no county and are "floaters." Perhaps WCA can offer up alternative(s) in a more comprehensive look at venue/county of responsibility, as discussed in 1., above.

1/20/06 – Having been provided no alternative by WCA, we continue to believe the bill's language should be retained as is.

4. **Attorney Fees – bill sec. 102, sec. 54.56(3)(c), p. 85, lines 9-19.** The WCA's concern here appears to be in requiring the county to pay GAL fees if a guardianship is ultimately not ordered. First, current law already provides that counties pay GAL fees for wards who are indigent when the guardianship is ordered. As concerns guardianship petitions that are not ordered, the Bar would be interested in any data on how often that occurs. In our experience, the petition is granted in over 98% of the cases. (Further, in cases that are contested, often the GAL drops out once defense counsel is appointed.) Thus, in practice, it is difficult to understand how this provision will increase costs to the county.

1/20/06 – We agree. Petitioner in an *unsuccessful* guardianship case, not the county, should pay the GAL fees for the GAL assigned to the non-adjudicated ward.

5. **GAL and Defense counsel fees for indigent individuals – bill sec. 465, sec. 54.46(3)(b), pp. 215-216, lines 22 (p.215) – 3 (p. 216).** WCA had suggested "capping" these fees for indigent individuals. In a conversation on a closely-related item at the Elder Law Section meeting on November 18, 2005, it appears clear that the Section would not support limiting GAL or defense representation in this most important proceeding where basic constitutional and other rights are at stake, based on inability to pay.

1/20/06 – Having been provided no response by WCA, we continue to believe the bill's language should be retained as is.

6. **GAL fees where guardianship is not ordered (i.e., petition denied) – bill sec. 102, sec. 54.46, p. 85.** At the WCA's request, I spoke with Dyann Hafner, Dane County Assistant Corporation Counsel, about this and other issues (see below). She stated that she did not agree with the public policy that assigned responsibility for GAL fees, where the guardianship petition is denied, to the county rather than the individual (the "non-ward") him or herself. Current law requires the non-ward to pay the fees, which seems grossly unfair in situations where the court determines that he/she is not incompetent. I am not speaking on behalf of the Section on this point, but it would seem that an appropriate response might be for the petitioner to pay the GAL fees in cases where the guardianship is not appointed (including the county only when the county was the petitioner). We would welcome an open discussion on this issue.

1/20/06 – This appears to be the same issue as 4., above. Therefore, we agree again. Petitioner in an *unsuccessful* guardianship case, not the county, should pay the GAL fees for the GAL assigned to the non-adjudicated ward.

7. **Guardian Compensation and Reimbursement – bill sec. 102, sec. 54.72, p. 93, lines 3-5.** WCA has suggested inserting the words "from the ward's estate" on line 5. That has consistently been the practice and interpretation of this language, currently in sec. 880.24(1), which does not include "from the ward's estate." We have no objection to including that language, unless this would pose a problem for counties that use elder abuse direct service funds, COP funds or various Medicaid waiver funds to pay guardians. Perhaps WCA's Attorney Phillips could consider this possibility and advise.

1/20/06 – Having been provided no response by WCA, we continue to believe the bill's language should be retained as is.

8. **Two Annual Reviews?** The Counties indicated that Dyann Hafner, Dane County Assistant Corporation Counsel was concerned about sec. 124 of the bill, creating sec. 55.19, on p. 111. They indicated that she was concerned that the counties would be responsible for "two annual reviews" – one "regular Watts review" and a second review for a psych medication. In fact, the language on p. 111, lines 19-22, state:

> **55.19 Annual review of order authorizing involuntary administration of psychotropic medication.** In addition to or in conjunction with the annual review required under s. 55/06(10.... (Emphasis added.)

It would not appear that there is a separate requirement. I note also that in talking to Dyann Hafner, she did not indicate that this was a concern.

1/20/06 – Retain current language. This is not a problem.

9. While Attorney Hafner did not express concern about the issue raised immediately above, she did object to the proposal's requirement that the county social worker meet personally with the ward before completing the *county's* annual report of protectively placed individuals. She was also concerned about the "timeline." She said that current practice in Dane County is for the county in January to send the report to the institution or case management agency providing service to the ward and request (require?) that they complete it for the county, then send it back to Dane County Social Services. At that point, the probate court assigns a GAL to go out and meet with the person, give notice of rights, determine whether there is an objection, etc. If there is a contest, they schedule hearings, which usually take place some time between July and December every year. While I understand the staff time issue, it is hard for me to understand how a "county review" can be adequate if the county does not do the actual review of the individual. While an argument can be made that the institution/agency providing care knows the individual better, sees them more regularly, etc., than the county's social worker, that institution/agency also has a potential conflict of interest in wanting to keep that individual in their facility or on the agency's caseload. Hence, I believe due process and statutes require for an actual county employee to conduct the review.

   I can appreciate Attorney Hafner's concern about the timeline. She said that in Dane County, all reviews are started in January, as opposed to staggering them throughout the year, on (or near) the anniversary of the original order under Ch. 55. As such, individuals under ch. 55 order have their first annual review commenced the January after the initial order (anywhere from one to eleven months later) and then every January thereafter. She said that the proposal's system would require them to tickle, file and touch all cases on a totally different system and would require additional staff, for no clear purpose. Again, although I do not have authority to speak on behalf of the entire Section, I believe the Section would be open to looking at more flexibility on this issue.

1/20/06 – As indicated, the Elder Law Section would have been open to an alternative proposal, providing counties with more flexibility in their timelines for conducting the reviews. Unless drafter Debora Kennedy has an idea for a simple solution, having been provided no alternative language by WCA, we would retain the bill's current language.

? SB 391 pp. 112, 113 This does not appear to require a change to Dane Co's practice

10. **Shield law ("Managed services") – application to psych meds procedures.** At our meeting the WCA mentioned that Attorney Hafner had concerns about this issue. She did not so indicate during our conversation, but I will respond anyway. I believe that the psych meds procedures, being a protective service under ch. 55, would be subject to the shield law, as indicated in the policy section of the law, sec. 55.001, Wis. Stats.

1/20/06 – Not a problem. Retain bill's current language.

11. Involuntary psych meds – standard of harm – Attorney Hafner also mentioned her one concern with the new psych meds provision, [bill sec. 123, proposed sec. 55.14, pp. 106-118] requires at proposed sec. 55.14(3)(e) [p. 108 – lines 1-5] that

> … "unless psychotropic medication is administered involuntarily, the individual will incur an **immediate** or **imminent** substantial probability of physical harm, impairment, injury or debilitation or will present a substantial probability of physical harm to others. The substantial probability of physical harm, impairment, injury or debilitation shall be evidenced by one of the following….
>
> 1. [2 previous episodes with the ch. 51 system]
> 2. [the individual meets one of the five] dangerousness criteria set forth in s. 51.20(1)(a)2.a. to e.
>
> (Emphasis added.)

Attorney Hafner objects to the requirement that the individual's incurring a probability of harm, etc., to self be "immediate or imminent." I note that those modifiers are not included in current sec. 880.07(4m), Stats. I sought the input of Attorney Dianne Greenley, Wisconsin Coalition for Advocacy, with whom I worked on developing this provision. Neither of us has any objection to Attorney Hafner's suggestion that the words "immediate or imminent" be stricken. Again, I do not speak on behalf of the entire Section on this point.

1/20/06 – As indicated above, p. 108, line 2, strike the words "immediate or imminent" and change "an" to "a."

I regret not having received a written response from the Wisconsin Counties Association to the December 2, 2005 memo that summarized the November 15, 2005 discussion. I hope that the above responses will help clarify the position of the Elder Law Section of the State Bar on these points. As noted, I did speak with Dane County Assistant Corporation Counsel Dyann Hafner on several points and Attorney Dianne Greenley of the Wisconsin Coalition for Advocacy. On behalf of the Section, I offer my great appreciation for your continued commitment to this very important and complex bill.

Kennedy, Debora

From: Betsy J. Abramson [abramson@mailbag.com]
Sent: Tuesday, January 24, 2006 5:35 PM
To: Kennedy, Debora
Subject: Fw: One "quick" question re: spendthrifts?

DAK:
FInal decision on this piece - NONE of the rights currently listed as subject to removal for an incompetency guardianship should be included as subject to removal for a spendthrift guardianship. Hope that's clear. Bets

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----- Original Message -----
From: beckerhickey_bjb
To: Betsy J. Abramson ; Ellen Henningsen
Cc: debora.kennedy@legis.state.wi.us
Sent: Tuesday, January 24, 2006 5:25 PM
Subject: Re: One "quick" question re: spendthrifts?

I agree with you, Betsy.

> ----- Original Message -----
> **From:** Betsy J. Abramson
> **To:** beckerhickey_bjb ; Ellen Henningsen
> **Cc:** debora.kennedy@legis.state.wi.us
> **Sent:** Monday, January 23, 2006 5:08 PM
> **Subject:** One "quick" question re: spendthrifts?
>
> Barbara and Ellen:
> Since you've been the most responsive on the spendthrift questions, guess what, you get tapped again! Debora Kennedy wants to know if any of the rights currently listed under proposed 54.25(1)(c) should be subject to removal - p. 73, line 15 to page 74, line 8. I say NO. Almost all are related to G/P stuff, except the "right to make a will." I say NO to that one too, since we only supposedly care about spendthrifts not wasting their own money so that they can't care for themselves. I don't care, once they've passed, if they had "foolishly" decided to leave all their money to Circus World, or Tammy Faye Baker or anywhere else. And you guys? Thanks as always. BA
>
> Betsy J. Abramson
> Attorney / Elder Law Consultant
> 520 Miller Ave.
> Madison, WI 53704
> (608) 332-7867
> abramson@mailbag.com

January 25, 2006

To: Senator Luther Olsen and Corey Bruce
Representative John Townsend (Matt Pulda)
Senator Mark Miller (Jamie Kuhn)
Betsy Abramson, Advisor, State Bar of Wisconsin's Elder Law Section
Ellen Henningsen, CWAG Elder Law Center

From: Craig M. Thompson, Legislative Director
Sarah Diedrick-Kasdorf, Senior Legislative Associate
Wisconsin Counties Association

Attorney Andrew T. Phillips
STADLER, CENTOFANTI & PHILLIPS, s.c.
Counsel to Wisconsin Counties Association

Re: Senate Bill 391

Following the meeting on November 15, 2005, regarding SB 391, the Wisconsin Counties Association received a memorandum from Attorney Betsy Abramson addressing the concerns the WCA raised through the course of the meeting (and in the public hearing).[1] We have now had an opportunity to review our concerns in detail, together with the explanation from Attorney Abramson set forth in her memorandum, and offer the following for your consideration.

1. Venue and County of Responsibility

The WCA was concerned that SB 391 did not provide a workable mechanism concerning the interstate transfer of guardianships. Please find attached to this memorandum proposed language relating to an entirely new statutory section that would govern all proceedings related to the interstate transfer of guardianships. You will note that the great majority of the language set forth in the attached was taken from the *Final Report of the NCPJ Advisory Committee on Interstate Guardianships, Presented to: National College of Probate Judges October 12, 1998, Appendix D.* This report can be accessed at http://www.ncsconline.org/WC/Publications/Res_CusSup_InterstateGuardianPub.pdf. In addition to the language attached, the WCA requests that a new section 55.06(e) be created to read as follows: "*Every petition for protective placement shall contain a signed certification stating that the Petitioner is not aware of any guardianship or related proceedings involving the proposed ward in another state. The failure of a Petitioner to execute such certification shall result in dismissal of the petition.*" The WCA believes that the inclusion of this certification will insure that an individual is unable to

[1] A copy of this memo is also attached for reference.

circumvent the procedures outlined in the attached, which should be the exclusive procedure relating to the guardianship adjudication of persons subject to a foreign guardianship proceeding.

With respect to the intrastate transfer of guardianships, the WCA remains concerned that SB 391 allows a guardian to move an incompetent ward merely upon the guardian's declaration of intent. This drastically changes the current system of allocating financial responsibility between counties. Allowing a guardian the unfettered ability to move a ward upon declaration of intent sets up a system that discourages cooperation between counties and encourages forum shopping. Given the financial implications associated with determining the county of responsibility, the WCA opposes any change to the current standards associated with venue and county of responsibility.

2. Role of Guardian ad Litem (GAL)

The WCA withdraws its opposition to the codification of the roles and responsibilities of a GAL as set forth in SB 391.

3. Cost responsibility when committed individual voluntarily moves to another county, or is transferred. Bill section 61, sec. 51.20(13)(g)4, pp. 37-38, lines 22 (p. 37) – 2 (p. 38)

The WCA continues to oppose the proffered language. There are instances where an individual who is not a resident of the state is nonetheless found in a county and needs services. One example would be prisoners brought to the county jail from out of state. Currently, the individual is considered "at large" and the state pays for the services. The WCA would like to see this practice continued and, therefore, opposes the change.

4. GAL and Attorney Fees where guardianship is not ordered

Attorney Abramson's memo splits this issue into two sections (under item 3 and item 5 of her memo). The WCA suggests that it would be equitable for the Petitioner (including a county) to pay for the defense attorney and GAL in instances where a petition for guardianship is denied. Attorney Abramson suggests that this approach may be workable.

5. GAL and defense counsel fees for indigent individuals – bill sec. 465, sec. 54.46(3)(b), pp. 215-216, lines 22 (p. 215) – 3 (p. 216)

Currently, counties across the state have wide latitude in working with the courts at setting the hourly billing rate for attorneys appointed as GAL and/or defense counsel. The WCA is not asking that a hard cap be imposed upon the total amount of compensation to a GAL or defense counsel. Instead, the WCA believes that counties should retain the ability to work with the courts in setting maximum hourly billing rates, as well as other procedures relating to how GALs and defense counsel are compensated.

6. Guardian Compensation and Reimbursement – bill sec. 102, sec. 54.72, p. 93, lines 3-5.

The WCA has researched the issue and could find no problem associated with the inclusion of the words "from the ward's estate" on line 5. Therefore, the WCA respectfully requests the inclusion of such language.

7. Two Annual Reviews?

The WCA is not opposed to the review procedure in sec. 124 of the bill.

8. Annual Report Procedure

The WCA is not opposed to the bill's requirement that a county social worker meet personally with the ward before completing the county's annual report of protectively placed individuals. With respect to the timeline issue, the WCA requests that counties be provided with flexibility on the timing of the reviews – *i.e.*, that the reviews not be mandated based upon the anniversary date of an individual's protective placement. This request seems to be consistent with Attorney Abramson's memorandum.

9. Shield law ("Managed services") – application to psych meds procedures.

Given the shield law's inclusion in Wis. Stats. § 55.001, and Attorney Abramson's interpretive guidance, the WCA withdraws its concerns relating to the application of the shield law to psych meds procedures. The bill's provision concerning psych meds procedures does not alter the shield law analysis. To the extent there is a disagreement or ambiguity, the WCA would request a specific reference indicating that the shield law applies to psych meds procedures.

10. Involuntary psych meds – standard of harm

The WCA requests that the bill be amended to remove the reference to "immediate or imminent" from sec. 123, proposed sec. 55.14(3)(e), p. 108 – lines 1-5. This would be consistent with Attorney Abramson's suggestion.

The WCA requests that this memorandum and the attached proposal be provided to a drafting attorney as soon as possible. Once complete, the WCA requests the opportunity to review the draft amendment to SB 391 to ensure that all concerns identified above have been addressed.

The WCA thanks the Senators, staff and others involved in the drafting and analysis of SB 391 for the opportunity to participate in this very important piece of legislation. If there are any questions or concerns relating to the above, or the attached language, please do not hesitate to contact us.

Kennedy, Debora

From: Betsy J. Abramson [abramson@mailbag.com]
Sent: Thursday, January 26, 2006 9:27 AM
To: Kennedy, Debora
Subject: Fw: Electronic Version of Guardianship Language

Attachments: Amendment to Guardianship Bill_1.doc; Memo to Sen Olsen re guardianship bill.doc


Amendment to Guardianship Bill...


Memo to Sen Olsen re guardians...

Juristiction..... Haven't read it myself closely enough to know if I like it, but, it's lingo! I'm trying to understand Ellen's tutorial about the difference between "venue" and "jurisdiction." This may be pushing my pea brain over the edge. I think I have been Peter Principle'd out of Guardianship Reform. BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com
----- Original Message -----
From: "Diedrick-Kasdorf" <Diedrick@wicounties.org>
To: <guardian@cwag.org>; <abramson@mailbag.com>
Sent: Wednesday, January 25, 2006 1:56 PM
Subject: Electronic Version of Guardianship Language

> Betsy and Ellen:
>
> Attached please find the electronic version of the documents we
> distributed to you today. As we discussed, please send some dates you
> are available to meet.
>
>
>
> Sarah Diedrick-Kasdorf
> Senior Legislative Associate
> Wisconsin Counties Association
> 22 E. Mifflin Street, Ste. 900
> Madison, WI 53703
> 608-663-7188
> 608-663-7189 (fax)
>

RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP

I. JURISDICTION. A guardian who is appointed by a foreign court of competent jurisdiction for an incompetent person residing ~~or domiciled~~ in this State or who intends to move to this State, may petition to have the guardianship transferred to and accepted in this State. This section shall be the exclusive process for ~~adjudication of~~ an incompetent person's guardianship in situations where the ~~proposed~~ ward is subject to a guardianship or related proceeding in another state.

II. PETITION.

A. The petition for the receipt and acceptance of a foreign guardianship shall be filed in the court where the ward resides, ~~is domiciled~~, or intends to reside in the future.

B. The petition shall include the following:

1. A certified copy of the foreign guardianship order, including:

   a. all attachments describing the duties and powers of the guardian; and
   b. all amendments or modifications to the foreign guardianship order entered subsequent to the original order, including the order to transfer the guardianship, if applicable;

2. the address of the foreign court from which the guardianship order was issued;

3. a listing of any other guardianship petitions that are pending in any jurisdiction and the names and addresses of the courts where the petitions have been filed;

4. the petitioner's name, residence, current address, relationship (other than guardian) to the ward;

5. the name, age, principal residence, and current address of the ward;

6. the name and address of the ward's:

   a. spouse; and
   b. adult children or, if the ward has none, the ward's parents and adult siblings, or if the ward has none, at least one adult nearest in kinship to the ward if one can be found;

7. the name and address of the person responsible for the care or custody of the ward, if other than the guardian;

8. the name and address of any legal representative, including a guardian ad litem appointed by the foreign court, for the ward;

9. the reason(s) for the transfer of the guardianship; and

10. a general statement of the ward's property, its location, and its estimated value, including any insurance or pension, and the source and amount of any other anticipated income or receipts.

54.34 (3)(intro) C. The petition for receipt and acceptance of a foreign guardianship may be supplemented with other petitions related to the guardianship including a petition to modify the terms of the guardianship.

III. NOTICE OF PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP.

A. Notice of the petition for receipt and acceptance of a foreign guardianship shall be served personally on the ward. The notice shall be in plain language and large type, and shall:

1. include a statement that the ward has a right to a hearing on the petition for receipt and acceptance of a foreign guardianship;

2. inform the ward of procedures to exercise his or her right to a hearing; and

3. describe the consequences of a transfer of the guardianship from the foreign jurisdiction to this State.

Failure to serve the ward notice of the petition as set forth herein precludes the court from granting the petition.

B. Notice of the petition for receipt and acceptance of a foreign guardianship shall be given to the court from which the guardianship is to be transferred. Notice to the foreign court shall include a request that the foreign court:

1. certify (a) that the foreign court has no knowledge that the guardian has engaged in malfeasance, misfeasance or nonfeasance during his or her appointment as guardian; (b) that periodic reports have been filed in a satisfactory manner; and (c) that all bond or other security requirements imposed under the guardianship have been performed; and

2. forward copies of all documents filed with the foreign court relevant to the guardianship, including but not limited to (a) the initial petition for guardianship and other filings relevant to the appointment of the guardian; (b) reports and recommendations of guardians ad litem, court visitors, or other individuals appointed by the foreign court to evaluate the appropriateness of the guardianship; (c) reports of physical or mental health practitioners describing the capacity of the ward to care for him or herself or to manage his or her affairs; (d) periodic status reports on the condition of the ward and the ward's assets; and (e) the order to transfer the guardianship, if any.

Failure to give the foreign court notice of the petition for receipt and acceptance of a foreign guardianship or to procure the requested certifications and copies of guardianship documents precludes the court from granting the petition.

C. If the court finds that the criteria set forth in sec. 54.40(1) are met, the court shall appoint a guardian ad litem for the ward upon receipt of the petition.

D. The petitioner shall give notice of the petition for receipt and acceptance of a foreign guardianship to all interested persons, as defined in sec. 54.01(17), including any legal counsel appointed or retained for the ward or any guardian ad litem appointed for the ward. The notice shall include a statement informing these persons of the right to object to the receipt and acceptance of the guardianship from the foreign jurisdiction to this state. Failure to give notice under this subsection precludes the receipt and acceptance of the guardianship.

E. All persons receiving notice under this section shall have 30 days from the mailing of the notice to request a hearing on the petition for receipt and acceptance of the foreign guardianship.

IV. HEARING ON THE PETITION FOR RECEIPT AND ACCEPTANCE OF A FOREIGN GUARDIANSHIP.

A. On motion by the ward, by any person named in the petition or by any other interested person, as defined in sec. 54.01(17), or on the court's own motion, the court shall hold a hearing to consider the petition for receipt and acceptance of a foreign guardianship.

B. If the petition for receipt and acceptance of a foreign guardianship includes a request to modify the provisions of the guardianship, the court shall hold a hearing to consider the petition for receipt and acceptance of a foreign guardianship.

C. The procedures set forth in sec. 54.44 shall be observed for any hearings on the petition for receipt and acceptance of a foreign guardianship.

D. If any person receiving notice of the petition for receipt and acceptance of a foreign guardianship challenges the validity of the foreign guardianship or the authority of the foreign court to appoint the guardian, the court may stay this proceeding while the interested person is afforded the opportunity to have the foreign court hear the challenge and determine its merits.

V. REQUIREMENTS FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP.

A. The court shall grant a petition for receipt and acceptance of a foreign guardianship provided that:

1. the guardian is presently in good standing with the foreign court;

2. the guardian is not moving or has not moved the ward or the ward's property from the foreign jurisdiction for the purpose of avoiding or circumventing the provisions of the guardianship order; and

3. the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward.

B. In granting a petition for receipt and acceptance of a foreign guardianship, the court shall give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

C. Notwithstanding subsection (B), the court may modify the provisions of the guardianship with respect to surety bond requirements, the appointment of a guardian ad litem, periodic reporting requirements, or other administrative provisions to bring the guardianship into compliance with the laws of this State.

D. The court may require the guardian to file an accounting of the ward's property at the time of the transfer from the foreign jurisdiction.

E. If the petition for receipt and acceptance of a foreign guardianship is granted, the court shall coordinate with the foreign court to facilitate the orderly transfer of the guardianship. To coordinate the transfer, the court is authorized to:

1. delay the effective date of the receipt and acceptance;

2. make the receipt and acceptance contingent upon the release of the guardianship or the termination of guardianship and the discharge of the guardian in the foreign jurisdiction;

3. recognize concurrent jurisdiction over the guardianship for a reasonable period of time to permit the foreign court to release the guardianship or to terminate the guardianship and discharge the guardian in the foreign jurisdiction; or

4. make other arrangements that, in the discretion of the court are necessary to effectuate the receipt and acceptance of the guardianship.

F. The denial of a petition for receipt and acceptance of a guardianship does not affect the right of a guardian appointed by a foreign court of competent jurisdiction to petition for guardianship under sec. 54.34.

VI. REVIEW OF THE GUARDIANSHIP

A. Within a reasonable period of time after the receipt and acceptance of the foreign guardianship, the court shall review the provisions of the guardianship.

B. As part of its review, the court shall inform the guardian and ward of services that may be available to the ward.

C. Upon petition by the guardian, the ward, or another interested person, the court may modify the type of appointment or powers granted to the guardian in accordance with Chapter 54.

54.68 (1)

Kennedy, Debora

From: Betsy J. Abramson [abramson@mailbag.com]
Sent: Thursday, January 26, 2006 2:51 PM
To: Diedrick-Kasdorf; Bruce, Cory; Kennedy, Debora; Ellen Henningsen
Subject: Meeting on Jurisdiction and Venue

Monday 1:30 at Debora Kennedy's at 1 E. Main (LRB), 2nd floor. We will call Andy at the number you give us. Thanks! BA Betsy J. Abramson Attorney / Elder Law Consultant 520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com
----- Original Message -----
From: "Diedrick-Kasdorf" <Diedrick@wicounties.org>
To: "Betsy Abramson" <abramson@mailbag.com>
Sent: Thursday, January 26, 2006 1:42 PM
Subject: Re: Electronic Version of Guardianship Language

> Betsy:
>
> The only time that works for us is 1:30 on Monday. Our attorney, Andy
> Phillips, is only available by phone that day and is in court the next
> several days. Where will we be meeting and is there phone capability to
> conference Andy in?
>
> Sarah
>
>
>
> Sarah Diedrick-Kasdorf
> Senior Legislative Associate
> Wisconsin Counties Association
> 22 E. Mifflin Street, Ste. 900
> Madison, WI 53703
> 608-663-7188
> 608-663-7189 (fax)
>

262 - 241 - 1900
ext. 3

Betsy J. Abramson

From: "Bruce Tammi" <btammi@wi.rr.com>
To: <abramson@mailbag.com>
Sent: Saturday, January 28, 2006 10:35 AM
Subject: SB 391

BETSY:

I have reviewed the county assoc. proposal concerning out of state guardianships and for the most part I believe it can work and at it is more comprehensible than the Supreme Court mandated scheme.
One drawback to the proposal is that it appears to assume all State Courts will adopt and honor its reciprocal provisions. What if a foreign Court ignores a request for certifications required by the proposed legislation? To help with this potential problem I would change the wording after III B.1.2.(page 3 top) to the following:

Failure to give the foreign court notice of the petition for receipt and acceptance of a foreign guardianship and to request certifications and copies of guardianship documents precludes the court from granting the petition.
The court may grant the petition if the required certifications are requested of the foreign court by the petitioner but the foreign court fails to provide the certifications required by this statute within 30 days of petitioner's request.

Bruce

To discuss 1/30/06: S0472

1. See items of "10/19/06 Conversation w/ Betsy Abramson" review CHECK items

2. p. 159, l. 12: Delete "(1) or" ? Guardian manages property throughout s. 54.A, not just sub. (1). (see pp. 64 + 65)

3. Access to records – See Item# 18 – See my changes p. 21E, 106; should 51.30 (5) be amended? See difference from my Notes.

No; bec of ref to 51.30 + bec of 51.30 (4)(b)4.

4. p. 80 Notice – DAK to talk to RPN

See 2/1/06 email DAK – BJA

1. a. p. 77, l. 12 – Release of ct. + treatment records are subject to 51.30(5) and release of pt hlth care records is subj. to s. 146.81

b. p. 77, l. 14-16 – delete from bill

1/30/06 Betsy Abramson, Ellen Henningsen, Craig Thompson, Sarah Dietrich-Kasdorf, Andy Phillips

Remove SECS 110, 111, 125 from AB 785

and SEC 110 – add "if applicable" after "guardianship and"

SEC 111 – add " " " " " " "

SEC 125 –

262-241-1900, ext. 3 Andy Phillips Amendments to SB 391

Receipt + Acceptance

From 1/25/06 Memo to Sen Olsen from Craig Thompson

① p. 80, l. 3 add to 54.34 (3)(p)

1. Venue + Cost Responsibility

See also 54.46(1)(a)4

② III B1. – See attached

The ct. may grant the petition . . .

③ From Memo # 3 Sarah (663-7188 or Craig)

Delete SEC 61

④ From memo # 4

p. 85, l. 10 replace "co" w/ petitioner

l. 11 delete "the co"

l. 11 after "litem" add "proposed ward's counsel"

Delete "The" on line 11 through line 18

⑤ From memo # 5 – Ignore

⑥ From Memo # 6 – Ignore

⑦ From Memo # 7 – No change at this time

LRB Wisconsin Legislative Reference Bureau

(8) From Memo # 8 – Ignore

(9) From Memo # 9 – Ignore

(10) From Memo # 10 – removed "or imminent"

Kennedy, Debora

From: Ellen Henningsen [guardian@cwag.org]
Sent: Monday, January 30, 2006 10:39 AM
To: Betsy J. Abramson; Matthias, Mary
Cc: Kennedy, Debora
Subject: RE: Electronic Version of Guardianship Language

This makes sense to me.

Re Jane E.P. - I like their stuff better to because it gets rid of having to petition the sending state. However, some states may require that the court grant permission to leave the state. What does SB 391 say about that? Is there anything in there about guardians with wards under WI guardianship being able to leave the state permanently with or without the permission of the state? There's an old case Town of Carlton that says the guardian must have the permission of the state to move the ward permanently, but I don't think it's followed much.

Attorney Ellen J. Henningsen
Director, Wisconsin Guardianship Support Center Elder Law Center of the Coalition of Wisconsin Aging Groups 2850 Dairy Drive, Suite 100 Madison, WI 53718-6751
608-224-0606 ext. 314
fax 608-224-0607
guardian@cwag.org
www.cwag.org/legal/guardian-support

-----Original Message-----
From: Betsy J. Abramson [mailto:abramson@mailbag.com]
Sent: Monday, January 30, 2006 10:25 AM
To: Matthias, Mary
Cc: Ellen Henningsen; Kennedy, Debora
Subject: Re: Electronic Version of Guardianship Language

All: I suggest we wait until after this afternoon's meeting where Sarah D-K and Craig Thompson, from Wis. Counties Assoc. will be present. I had a nice chat with Sarah this a.m., gave me the phone number for their legal counsel for this p.m. I asked her if she had ever seen the venue (for in-state folks/intra-county) and she hadn't. I forwarded it. Then mentioned that perhaps it made sense to pull everything venue/jurisdiction-related so Debora had enough time to draft and take it all up as a separate bill.
I think they're int'd in getting the out-of-state stuff settled now (what they submitted), but the venue maybe later. They see Jane E.P. as being the law now and like their lingo better. So, let's all talk this p.m. BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com
----- Original Message -----
From: "Matthias, Mary" <Mary.Matthias@legis.state.wi.us>
To: "Betsy J. Abramson" <abramson@mailbag.com>
Cc: "Ellen Henningsen" <guardian@cwag.org>; "Kennedy, Debora" <Debora.Kennedy@legis.state.wi.us>
Sent: Monday, January 30, 2006 10:10 AM
Subject: RE: Electronic Version of Guardianship Language

Betsy/Ellen/Deb:

Deb - I got the amendment to AB 785 (LRB 2191/1) it looks great- thanks.

What are you all thinking re: the out of state guardians and wards issue? Do you want to delete SECS. 110 and 111 from AB 785? I can't tell from these e-mails if you like the county language or want to stick with what's in the bill.

The options are:

Delete SECS 110 and 111 from 785. (If you do this I would like that added to the simple amendment that Deb has already drafted.)

Leave SECS 110 and 111 in and see what has transpired by the time the bill reaches the floor, amend it then as needed.

I don't think there will be a problem getting it through the committee either way. I am staffing the Townsend Committee that day and I can explain it to them.

We need to get the amendment to the Committee by 1:00 pm tomorrow.

Thanks!

-----Original Message-----
From: Betsy J. Abramson [mailto:abramson@mailbag.com]
Sent: Sunday, January 29, 2006 5:51 PM
To: Hurme, Sally
Cc: Ellen Henningsen; Matthias, Mary; Kennedy, Debora
Subject: Re: Electronic Version of Guardianship Language

Can't believe what a dope I am. Says right in their cover memo that they got this from NCCUSL and you had already told me they were scheduled for
2/3-5 - with major changes from this. Hmmmmm. We have a short legislative session and we really want to move. If you don't think we'd do something crazy by adopting this, then I'm hinking maybe we'll work on the point that you identified, close our eyes, plug our noses and JUMP!
Thanks for looking at it - and so speedily - and on a weekend! BA

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com
----- Original Message -----
From: "Hurme, Sally" <SHurme@aarp.org>
To: "Betsy J. Abramson" <abramson@mailbag.com>
Sent: Saturday, January 28, 2006 5:43 PM
Subject: RE: Electronic Version of Guardianship Language

Without doing a line by line and just reading over it quickly, it looks very similar to the National Probate Court Standards language, which was adopted in Jane E.P., which is where NCCUSL is heading. NCCUSL is meeting Feb. 3-5 which is really tight for your 48 hours before 2/8!

The only point I see right off is in I. jurisdiction. The last sentence mixes "adjudication." "incompetent person" and "proposed ward". I believe that this section is solely for circumstances when there has previously been an adjudication of incompetency. There would be no "proposed ward"; there is an adjudicated incompetent. (Don't you use "incapacitated" person?). The procedure is not to adjudicate capacity, that has been determined. It is to receive the case/file/person into the WI system. These provisions should be exclusive procedure for any proceeding in WI when respondent is --do you want to say "subject to

guardianship proceeding in other state" (what does "subject to proceeding" mean?)--or has been adjudicated incapacitated in another state--or something else that fits with your vocabulary.

Re: the preexisting guardian as the only person who can petition. I think that is what you want, to avoid having transfer petitions filed by outside parties who want to do some forum shopping to move the case out of the original state where they probably didn't get what they wanted.

III.B.1. is new---that's going to be interesting to get out of the other state!!!!!!!!! What if foreign court refuses to so certify. I can see asking for the file, but the certification might be too much.

Don't know what the "criteria in 54.40(1)" are, so can't comment.

D. think need to state that it's the legal counsel/GAL appointed in the foreign state, if any. NCCUSL is working on language that would have notice to all those who would be entitled to notice in both states if it were an original petition. (friends, family, etc)

VD do you want inventory and accounting.

VI.C is pretty open ended!

Hope this helps.

Sally Hurme
AARP Consumer Protection
202 434 2152
202 434 6594 (fax) (NEW)
601 E Street NW
Washington, DC 20049
shurme@aarp.org

-----Original Message-----
From: Betsy J. Abramson [mailto:abramson@mailbag.com]
Sent: Saturday, January 28, 2006 5:12 PM
To: Hurme, Sally
Subject: Fw: Electronic Version of Guardianship Language

Sally: This is what the Wisconsin Counties Association has put forward as their alternative re: jurisdiction for out-of-state cases. It looks like one of the uniform comissioners proposals you had sent me previously. Can you tell, without going to a lot of trouble, whether what they are proposing is the current form of the uniform proposal or has the uniform piece been changed by now? Thanks. This is the LAST (I hope I hope I hope) piece of this gigantic thing that we have to iron out. The Senate committee expects to vote on it 2/8, so they have to have the amendments 24-48 hours ahead of time, which means it has to be drafted by then, which means.... moving fast now! Thanks for any guidance Sally.

Betsy

Betsy J. Abramson
Attorney / Elder Law Consultant
520 Miller Ave.
Madison, WI 53704
(608) 332-7867
abramson@mailbag.com
----- Original Message -----
From: "Diedrick-Kasdorf" <Diedrick@wicounties.org>
To: <guardian@cwag.org>; <abramson@mailbag.com>
Sent: Wednesday, January 25, 2006 1:56 PM
Subject: Electronic Version of Guardianship Language

> Betsy and Ellen:
>
> Attached please find the electronic version of the documents we
> distributed to you today. As we discussed, please send some dates you

> are available to meet.
>
>
>
> Sarah Diedrick-Kasdorf
> Senior Legislative Associate
> Wisconsin Counties Association
> 22 E. Mifflin Street, Ste. 900
> Madison, WI 53703
> 608-663-7188
> 608-663-7189 (fax)
>

Kennedy, Debora

From: Kennedy, Debora
Sent: Wednesday, February 01, 2006 10:24 AM
To: 'Betsy J. Abramson'
Subject: Notice and jurisdiction

I had a lengthy talk with Bob Nelson, the drafter for Courts and Procedures, this morning concerning your item #16 (Subch. IV--Procedures, p. 80 of the bill) from your January 19 memo to me. In the first place, he was not thrilled to learn that there are numerous provisions concerning jurisdiction, venue, and notice in ch. 880, in current law, let alone as affected by the bill. As to your specific question concerning some way to ensure that notice is jurisdictional (i.e., that if an appropriate person is not given notice--i.e., served--there is no jurisdiction), he feels that 54.38 (1) in the bill should be scrapped (he had never heard of notice being sent by FAX, for instance) and that, instead, 54.38 (1) should say that notice shouold be served in the manner provided in s. 801.11, stats. (If that is done, he feels that the extensive current caselaw on service would apply and it would be unnecessary to explicitly state that faillure to serve deprives the court of jurisdiction.) The provisions in 54.38 (2) (who gets notice, and time limits before hearing) he thought were fine, because ch. 801 doesn't say anything about that with which this could conflict or be redundant to.

We also talked about issues of venue (54.30 (2), renumbered from 880.05) and change of venue 54.30 (3), renumbered from 880.06--he thinks, at a minimum, that 54.30 (2) whould notwithstand 801.50, and 54.30 (3) shouldl notwithstand 801.50 to 801.56.

He had several other comments, too, but I think they go more to the Leg. Council bill on county of residence, etc. He warns against mixing up the concept of venue with county of fiscal responsibility, etc.

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2/2/06 Questions for Andy Phillips

(1) Hearing on petition

As agreed, ct must hold hrng on motion by anyone reqd. to receive notice

(a) What abt. petitioner? (No)

(b) What if nobody puts forth motion? (No)

Time for hrng? 90 days after filing

54.44 (1) (a) says 90 days after pet filed

Proposed says may be heard (when?); if requested shall be heard (") if request to modify

(2) Rights of ward – same as in 54.42? No

ct. object to move ✗ Andy: ~~No~~ Yes

ch. in guardian ✗

Doesn't need to be present

→ See 54.38(1m), etc.

(3) Notice of petition – to be served by petitioner, right? (Yes)

How is notice to be served on for ct. ?

" interested persons?

(other) same as bill

(4) Does this petition apply to minors, as well as spendthrifts?

(No)

Kennedy, Debora

From: Barbara Hughes [bhughes@hill-law-firm.com]
Sent: Thursday, February 02, 2006 4:30 PM
To: Ellen Henningsen; beckerhickey_bjb; tammi@execpc.com; Jim Jaeger; Betsy J. Abramson; Lisa Roys
Cc: Kennedy, Debora
Subject: RE: Need input on SB 391

Yes.

Good question, no nice easy answer. In this kind of case under current law, the family has had to bring the person to Wisconsin before filing.

From: Ellen Henningsen [mailto:guardian@cwag.org]
Sent: Thursday, February 02, 2006 3:59 PM
To: beckerhickey_bjb; Barbara Hughes; tammi@execpc.com; Jim Jaeger; Betsy J. Abramson; Lisa Roys
Cc: Kennedy, Debora
Subject: RE: Need input on SB 391

Am I recording the vote correctly?
Barb H and Jim think the language should stay in.
Barbara B at first thought the language should be removed but now thinks the language should stay in.

If the language stays in, I wonder how we get jurisdiction over someone who has no connection to Wisconsin (other than a relative living here) and who does not have a guardian to act on their behalf.

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From: beckerhickey_bjb [mailto:beckerhickey_bjb@sbcglobal.net]
Sent: Thursday, February 02, 2006 2:25 PM
To: Barbara Hughes; Ellen Henningsen; tammi@execpc.com; Jim Jaeger; Betsy J. Abramson; Lisa Roys
Cc: Kennedy, Debora
Subject: Re: Need input on SB 391

I can't disagree with this reasoning. -- Barbara B.

> ----- Original Message -----
> **From:** Barbara Hughes
> **To:** Ellen Henningsen ; tammi@execpc.com ; beckerhickey_bjb ; Jim Jaeger ; Betsy J. Abramson ; Lisa Roys
> **Cc:** Kennedy, Debora
> **Sent:** Thursday, February 02, 2006 1:47 PM

Subject: RE: Need input on SB 391

I think we would definitely want this to apply to not yet adjudicated (but pretty obviously) incompetent non-residents being moved to a Wisconsin facility. These are cases where no family member resides in the parent's state of residence, where there is an absolute need for 24-hour care, inadequate or non-existent HCPOA, and where the responsibile family member(s) reside in Wisconsin. I can't even begin to count the times where my office has had to commence a guardianship proceeding in order for the individual to be admitted to a SNF or CBRF. Over time, several if not many SNFs have asked me questions about the order for taking care of these about to become new facility residents. It's been a chicken and egg situation, with the non-resident in a very unsafe and untenable situation in the state of residence. So my view is: leave in the italicized language.

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From: Ellen Henningsen [mailto:guardian@cwag.org]
Sent: Thursday, February 02, 2006 12:42 PM
To: tammi@execpc.com; Barbara Hughes; beckerhickey_bjb; Jim Jaeger; Betsy J. Abramson; Lisa Roys
Cc: Kennedy, Debora
Subject: Need input on SB 391

Betsy is out of town and asked me to work with Debora Kennedy on some issues relating to SB 391 so I met with her yesterday (Wednesday). There was one item that I didn't know how to handle and wanted your input.

The current draft of SB 391 on page 176, lines 16-24 is an amendment to the current venue statute of 880.05. The issue that Debora raised and I couldn't answer involves the last part – see italics - the bill states (I've removed the drafting stuff so it reads like it would if it were the new statute):

"54.30(2) Venue. All petitions for guardians of residents of the state shall be directed to the circuit court of the county of residence of the proposed ward or of the county in which the proposed ward is physically present. A petition for guardianship of the person or estate of a nonresident may be directed to the circuit court of any county in which the nonresident or any assets of the nonresident may be found *or of the county in which the petitioner proposes that the proposed ward resides."*

Debora wondered whether to leave that part in or not.

If petitioner we mean a guardian under a foreign guardian, then it should be left in, in my opinion – it seems consistent with our agreement with the Counties' proposal on transfer (which Betsy and I agreed to with some modifications). BUT if there isn't already a guardian, do we think that petitioners can file initial petitions for non-residents? My recollection is that it was included because of the Court of Appeals decision in Jane E.P. and was not meant to cover folks who didn't already have a foreign guardianship. If we mean it to apply only to foreign guardianships being transferred into Wisconsin pursuant to the transfer provisions, then I think the language needs to be clarified. If we mean it to apply to transfers as well as initial petitions, then we can leave it as is. Or perhaps it should come out?

Your thoughts, please.

Also, the Assembly Aging Committee favorably acted on AB 539 (APS) and AB 685 (CH. 55) yesterday! Now

on to the full Assembly.

Thanks.

Attorney Ellen J. Henningsen

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In Revised Bill

812.17 Impleader. When the answer of the garnishee discloses that any 3rd person claims the debt or property in the garnishee's hands and the name and residence of such claimant the court may order that such claimant be impleaded as a defendant in the garnishment action and that notice thereof, setting forth the facts, with a copy of such order and answer be served upon the ~~3rd person~~ 3rd–person claimant, and that after such service is made the garnishee may pay or deliver to the officer or the clerk such debt or property and have a receipt therefor, which shall be a complete discharge from all liability for the amount so paid or property so delivered. Such notice shall be served as required for service of a summons. Upon such service being made such claimant shall be deemed a defendant in the garnishee action, and within 20 days shall answer setting forth the claimant's claim or any defense ~~which~~ that the garnishee might have made.

NOTE: Corrects spelling.

SECTION 39. 880.76 (1) of the statutes is amended to read:

880.76 Securities ownership by incompetents and spendthrifts. (1) DEFINITIONS. (a) All definitions in s. 880.75 (1) (a) to (e) and (g) ~~shall~~ apply in this section, unless the context otherwise requires. ~~"Third~~

(b) In this section "3rd party" ~~is~~ means a person other than a bank, broker, transfer agent, or issuer who with respect to a security held by an incompetent or spendthrift effects a transaction otherwise than directly with the incompetent or spendthrift.

NOTE: Conforms word and definition form to current style. Deletes unnecessary "shall."

SECTION 40. 939.10 (intro.) of the statutes is amended to read:

939.10 ~~Common–law~~ Common law crimes abolished; ~~common–law~~ common law rules preserved. (intro.) ~~Common–law~~ Common law crimes are

*** NOTE: I added a comma after "section" to conform to current style. DTK

Debbie - I had a question that I neglected to ask you on Section 60. I don't think we should've repealed the title of 880.075 (title). Sorry. KJF

INSERT 62–14

SECTION 59. 880.07 (3) of the statutes is repealed.

INSERT 62–15

SECTION 60. 880.075 (title) of the statutes is repealed.

SECTION 61. 880.075 of the statutes is renumbered 54.44 (1) (b) and amended to read:

54.44 **(1)** (b) *Time of hearing for certain appointments.* A petition for guardianship of ~~a person~~ an individual who has been admitted to a nursing home or a community–based residential facility under s. 50.06 shall be heard within 60 days after it is filed. If an individual under s. 50.06 (3) alleges that an individual is making a health care decision under s. 50.06 (5) (a) that is not in the best interests of the incapacitated individual or if the incapacitated individual verbally objects to or otherwise actively protests the admission, the petition shall be heard as soon as possible within the 60–day period.

History: 1993 a. 187.

INSERT 72–7

SECTION 62. 880.155 of the statutes is renumbered 54.56 and amended to read:

54.56 Visitation by a minor's grandparents and stepparents. (1) In this section, "stepparent" means the surviving spouse of a deceased parent of a minor ~~child~~, whether or not the surviving spouse has remarried.

(2) If one or both parents of a minor ~~child~~ are deceased and the ~~child~~ minor is in the custody of the surviving parent or any other person, a grandparent or stepparent of the ~~child~~ minor may petition for visitation privileges with respect to the ~~child~~ minor, whether or not the person with custody is married. The grandparent or stepparent may file the petition in a guardianship or temporary guardianship proceeding under this chapter that affects the minor ~~child~~ or may file the petition to

CHAPTER 880 REWRITE – SERIOUS & PERSISTENT MENTAL ILLNESS

LRB–0027/1, SECTION 102.

...

54.01(14) "Impairment" means a developmental disability, serious and persistent mental illness, degenerative brain disorder, or other like incapacities.

...

54.01 (30) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability or of alcohol or drug dependence.

LRB–0027/1, SECTION 105. 55.01 (6v) of the statutes is created to read:

55.01 (6v) "Serious and persistent mental illness" means a mental illness that is severe in degree and persistent in duration, that causes a substantially diminished level of functioning in the primary aspects of daily living and an inability to cope with the ordinary demands of life, that may lead to an inability to maintain stable adjustment and independent functioning without long-term treatment and support, and that may be of lifelong duration. "Serious and persistent mental illness" includes schizophrenia as well as a wide spectrum of psychotic and other severely disabling psychiatric diagnostic categories, but does not include degenerative brain disorder or a primary diagnosis of a developmental disability, as defined in s. 51.01 (5) (a), or of alcohol or drug dependence.

LRB–0027/1, SECTION 304. 880.01 (7m) of the statutes is renumbered 55.14 (1) (b) and amended to read:

55.14 (1) (b) "Not competent to refuse psychotropic medication" means that,

~~because of chronic mental illness, as defined in s. 51.01 (3g)~~ for an individual with developmental disability or as a result of degenerative brain disorder, serious and persistent mental illness, or other like incapacities, and after the advantages and disadvantages of and alternatives to accepting the particular psychotropic medication have been explained to an individual, one of the following is true: ...

55.02, 2003 Stats. Protective service system; establishment. The department shall develop a statewide system of protective service for mentally retarded and other developmentally disabled persons, for aged infirm persons, for chronically mentally ill persons, and for persons with other like incapacities incurred at any age in accordance with rules promulgated by the department. The protective service system shall be designed to encourage independent living and to avoid protective placement whenever possible. The system shall use the planning and advice of...

55.06(2)(c), 2003 Stats. As a result of developmental disabilities, infirmities of aging, chronic mental illness or other like incapacities, is so totally incapable of providing for his or her own care or custody as to create a substantial risk of serious harm to oneself or others. Serious harm may be occasioned by overt acts or acts of omission; and